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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Room CY-B-402  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: Joint Application by BellSouth Corporation, et al., for Provision of In-Region,  
InterLATA Services in Florida and Tennessee

Dear Ms. Dortch:

Accompanying this letter is BellSouth's Joint Application for Provision of In-Region, InterLATA Services in Florida and Tennessee.

Pursuant to the Commission's filing requirements, the following are being provided with this letter:

- One original and one copy of the Joint Application in paper form, redacted for public inspection.
- Two CD-ROM sets containing the entire Joint Application, in electronic form, redacted for public inspection. The Joint Application includes a brief in support of the Joint Application, one appendix of affidavits and supporting exhibits (Appendix A), and 14 appendices containing additional supporting documentation (Appendices B through H for Florida and Appendices B through H for Tennessee).

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- One original in paper form of only those portions of the Joint Application that contain confidential information. This includes portions of Appendix A (affidavit and exhibits), Appendices C (271 Proceedings) for Florida and Tennessee, Appendices D (UNE Proceedings) for Florida and Tennessee, Appendix F (Line Sharing Proceeding) for Tennessee, and Appendix H (Selected Documents) for Tennessee. A copy of this letter accompanies the confidential portions of the Joint Application. The material designated as confidential includes information relating to carriers' wholesale and retail operations in Florida and Tennessee, and as to BellSouth's costs as well as other information containing trade secrets. None of this information is disclosed to the public, and disclosure would cause substantial harm. As such, we are requesting that these portions of the Joint Application receive confidential treatment by the Commission.

We are submitting a copy of the Joint Application, in paper form, redacted for public inspection, to Qualex (the Commission's copy contractor). In addition, we are providing the Common Carrier Bureau with 20 copies of the brief and 20 copies of Appendix A in paper form, as well as 20 sets of the CD-ROM version of the entire Joint Application in electronic form. All those copies of Appendix A have been redacted for public inspection. We are also providing the Florida Public Service Commission and Tennessee Regulatory Authority with electronic copies of the Joint Application. Furthermore, we are submitting to the Bureau one copy in paper form of only those portions of the Joint Application that contain confidential information.

We are also submitting four copies of the brief, four copies of Appendix A in paper form (with four copies of the proprietary portions), and eight CD-ROM sets containing the entire Joint Application in electronic form, redacted for public inspection to Cynthia Lewis, U.S. Department of Justice, 1401 H Street, N.W., Suite 8000, Washington, D.C. 20530. We are also including one copy of the state record proprietary material.

All inquiries relating to access (subject to the terms of any applicable protective order) to any confidential information submitted by BellSouth in support of the Joint Application should be addressed to:

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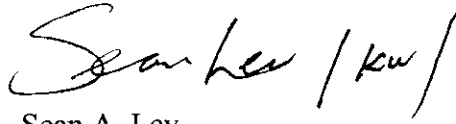
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Marlene H. Dortch  
September 20, 2002  
Page 3

Finally, we are submitting with this cover letter one original and four copies of BellSouth's Motion to Exceed Page Limits.

Please date-stamp the extra copy of this letter and return it to the individual delivering this package. If you have any questions, please contact me at (202) 326-7975. Thank you for your assistance in this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sean Lev / kw /". The signature is fluid and cursive, with a large initial "S" and a stylized "L".

Sean A. Lev

Encs.

**REDACTED – For Public Inspection**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Joint Application by BellSouth Corporation,  
BellSouth Telecommunications, Inc.,  
and BellSouth Long Distance, Inc. for  
Provision of In-Region, InterLATA Services  
in Florida and Tennessee

WC Docket No. \_\_\_\_\_

**BRIEF IN SUPPORT OF APPLICATION BY BELL SOUTH FOR PROVISION  
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## TABLE OF CONTENTS

INTRODUCTION AND EXECUTIVE SUMMARY.....	1
I. THE STATE PROCEEDINGS.....	5
A. Florida.....	6
B. Tennessee.....	10
II. BELLSOUTH SATISFIES THE REQUIREMENTS OF TRACK A IN BOTH FLORIDA AND TENNESSEE .....	12
III. BELLSOUTH HAS ADOPTED COMPREHENSIVE AND RELIABLE STATE-APPROVED PERFORMANCE MEASUREMENTS .....	14
IV. BELLSOUTH SATISFIES ALL REQUIREMENTS OF THE COMPETITIVE CHECKLIST IN FLORIDA AND TENNESSEE.....	16
A. Checklist Item 1: Interconnection.....	16
1. Methods of Interconnection.....	18
2. Nondiscriminatory Access to Interconnection Trunks .....	20
3. Collocation.....	21
B. Checklist Item 2: Nondiscriminatory Access to Unbundled Network Elements.....	25
1. Access to UNEs Generally.....	25
2. UNE Combinations.....	25
3. Pricing of Unbundled Network Elements .....	27
4. Nondiscriminatory Access to OSS.....	38
a. Regionality.....	41
b. Independent Third-Party Testing .....	42
c. Change Management Process .....	47
d. BellSouth's Systems .....	62
i. Pre-Ordering Functions.....	63

ii.	Ordering and Provisioning Functions .....	66
iii.	Manual Interfaces.....	76
iv.	Maintenance and Repair Functions.....	78
v.	Billing .....	80
vi.	Support for CLECs .....	81
C.	Checklist Item 3: Poles, Ducts, Conduits, and Rights-of-Way.....	82
D.	Checklist Item 4: Unbundled Local Loops .....	83
1.	Stand-Alone Loops .....	85
a.	Hot Cuts .....	86
b.	Stand-Alone Loop Performance .....	88
c.	High-Speed Digital Loops .....	90
2.	Access to Subloop Elements.....	91
3.	Access to xDSL-Capable Loops .....	92
4.	ISDN-BRI Loop Provisioning .....	95
5.	Line Sharing.....	96
6.	Line Splitting .....	99
E.	Checklist Item 5: Unbundled Local Transport.....	99
F.	Checklist Item 6: Unbundled Local Switching.....	101
G.	Checklist Item 7: Nondiscriminatory Access to 911, E911, Directory Assistance, and Operator Call Completion Services .....	102
1.	911 and E911 Services.....	103
2.	Directory Assistance/Operator Services .....	103
H.	Checklist Item 8: White Pages Directory Listings for CLEC Customers.....	104
I.	Checklist Item 9: Nondiscriminatory Access to Telephone Numbers.....	105
J.	Checklist Item 10: Nondiscriminatory Access to Signaling and Call-Related Databases .....	106

K.	Checklist Item 11: Number Portability .....	107
L.	Checklist Item 12: Local Dialing Parity .....	109
M.	Checklist Item 13: Reciprocal Compensation.....	110
N.	Checklist Item 14: Resale .....	111
V.	BELLSOUTH’S ENTRY INTO THE INTERLATA SERVICES MARKET IN FLORIDA AND TENNESSEE WILL PROMOTE COMPETITION AND FURTHER THE PUBLIC INTEREST .....	113
A.	Consumers Clearly Benefit from Bell Company Entry into the In-Region, InterLATA Market.....	115
B.	Performance Remedy Plans .....	117
VI.	BELLSOUTH’S COMPLIANCE WITH SECTION 272 .....	119
	CONCLUSION.....	120

## ATTACHMENTS

- Attachment 1: CLEC Entry Chart
- Attachment 2: Required Statements
- Attachment 3: Certifications
- Attachment 4: Status of Federal Court Challenges Under 47 U.S.C. § 252(e)(6)
- Attachment 5: Detailed Index of Appendices (Separately Bound)

### Affidavits (Appendix A)

- A Ken L. Ainsworth  
(Local Carrier Service Center)
- B Pavan Bhalla  
(BellSouth Long Distance Section 272 Compliance)
- C D. Daonne Caldwell  
(Cost Studies)
- D Alfred A. Heartley  
(Network Regionality)
- E Jamshed K. Madan and Michael D. Dirmeier  
(Tennessee Loop Rate Study)
- F W. Keith Milner  
(Checklist Compliance Issues)
- G John A. Ruscilli and Cynthia K. Cox  
(Policy; Pricing; SGATs and Binding Legal Commitments; Local Switching; Local  
Dialing Parity; Reciprocal Compensation; Resale; Section 272 Compliance)
- H David P. Scollard  
(Billing)
- I William N. Stacy  
(Access to Operations Support Systems)
- J Elizabeth Stockdale  
(Competition and Public Interest)
- K Alphonso J. Varner  
(Performance Measures)



**FLORIDA**

- Appendix B – FL: Selected Interconnection Agreements
- Appendix C – FL: Selected Portions of the Record of the Florida Public Service Commission Docket Nos. 960786, 960786A, and 960786B (271 Proceedings)
- Appendix D – FL: Selected Portions of the Record of the Florida Public Service Commission Docket Nos. 990649 and 990649A (UNE Investigation)
- Appendix E – FL: Selected Portions of the Record of the Florida Public Service Commission Docket Nos. 000121 and 000121A (OSS Proceedings)
- Appendix F – FL: Selected Portions of the Record of the Florida Public Service Commission Docket No. 000075-TP (Reciprocal Compensation)
- Appendix G – FL: Selected Portions of the Record of the Florida Public Service Commission Docket Nos. 981834 and 990321 (Third Party Testing and Collocation)
- Appendix H – FL: Selected Documents

**TENNESSEE**

- Appendix B – TN: Selected Interconnection Agreements
- Appendix C – TN: Selected Portions of the Record of the Tennessee Regulatory Authority Docket No. 97-00309 (271 Proceeding)
- Appendix D – TN: Selected Portions of the Record of the Tennessee Regulatory Authority Docket No. 97-01262 (UNE Proceeding)
- Appendix E – TN: Selected Portions of the Record of the Tennessee Regulatory Authority Docket No. 01-00362 (OSS Proceeding)
- Appendix F – TN: Selected Portions of the Record of the Tennessee Regulatory Authority Docket No. 00-00544 (Line Sharing Proceeding)
- Appendix G – TN: Selected Portions of the Record of the Tennessee Regulatory Authority Docket No. 01-00193 (Performance Proceeding)
- Appendix H – TN: Selected Documents

## GLOSSARY OF 271 ORDERS

<i>Five State Order</i>	Memorandum Opinion and Order, <i>Joint Application by BellSouth Corporation, et al., for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina</i> , WC Docket No. 02-150, FCC 02-260 (rel. Sept. 18, 2002)
<i>GA/LA Order</i>	Memorandum Opinion and Order, <i>Joint Application by BellSouth Corporation, et al., for Provision of In-Region, InterLATA Services in Georgia and Louisiana</i> , 17 FCC Rcd 9018 (2002)
<i>KS/OK Order</i>	Memorandum Opinion and Order, <i>Joint Application by SBC Communications Inc., et al., for Provision of In-Region, InterLATA Services in Kansas and Oklahoma</i> , 16 FCC Rcd 6237 (2001), <i>remanded in part, Sprint Communications Co. v. FCC</i> , 274 F.3d 549 (D.C. Cir. 2001)
<i>Massachusetts Order</i>	Memorandum Opinion and Order, <i>Application by Verizon New England Inc., et al., For Authorization to Provide In-Region, InterLATA Services in Massachusetts</i> , 16 FCC Rcd 8988 (2001), <i>appeal pending, WorldCom, Inc. v. FCC</i> , No. 01-1198 (and consolidated cases) (D.C. Cir.)
<i>Michigan Order</i>	Memorandum Opinion and Order, <i>Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan</i> , 12 FCC Rcd 20543 (1997)
<i>New Jersey Order</i>	Memorandum Opinion and Order, <i>Application by Verizon New Jersey Inc., et al., for Authorization To Provide In-Region, InterLATA Services in New Jersey</i> , 17 FCC Rcd 12275 (2002)
<i>New York Order</i>	Memorandum Opinion and Order, <i>Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York</i> , 15 FCC Rcd 3953 (1999), <i>aff'd, AT&amp;T Corp. v. FCC</i> , 220 F.3d 607 (D.C. Cir. 2000)

<i>Pennsylvania Order</i>	Memorandum Opinion and Order, <i>Application of Verizon Pennsylvania Inc., et al. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania</i> , 16 FCC Rcd 17419 (2001), <i>appeal pending, Z-Tel Communications, Inc. v. FCC</i> , No. 01-1461 (D.C. Cir.)
<i>Second Louisiana Order</i>	Memorandum Opinion and Order, <i>Application of BellSouth Corporation, et al., for Provision of In-Region, InterLATA Services in Louisiana</i> , 13 FCC Rcd 20599 (1998)
<i>South Carolina Order</i>	Memorandum Opinion and Order, <i>Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In South Carolina</i> , 13 FCC Rcd 539 (1997), <i>aff'd, BellSouth Corp. v. FCC</i> , 162 F.3d 678 (D.C. Cir. 1998)
<i>Texas Order</i>	Memorandum Opinion and Order, <i>Application by SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas</i> , 15 FCC Rcd 18354 (2000)

## **INTRODUCTION AND EXECUTIVE SUMMARY**

Pursuant to section 271(d)(1) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "1996 Act" or "Act"), 47 U.S.C. § 271(d)(1), BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. (collectively, "BellSouth") hereby seek authorization to provide interLATA services originating in the States of Florida and Tennessee, including all services treated as such under 47 U.S.C. § 271(j).

Twice since May of this year, this Commission has issued detailed orders approving BellSouth's section 271 applications. In each instance, the Commission's conclusion accorded with the recommendation of the United States Department of Justice ("DOJ") and with the unanimous decisions of the relevant state commissions.

This Application should be approved for all the same reasons that this Commission has enunciated in these recent proceedings. BellSouth satisfies its checklist requirements using the same procedures and systems across all nine states in its region. Accordingly, this Commission has now twice concluded that BellSouth's Operations Support Systems ("OSS") are regional. Similarly, BellSouth developed its TELRIC-compliant rates for Florida and Tennessee using the same cost study methodologies that this Commission has reviewed in prior applications. Finally, as in prior Applications, BellSouth continues to meet the vast majority of its performance metrics. For instance, in Florida, for July 2002, BellSouth met 88% of the key metrics that this Commission has previously emphasized; BellSouth satisfied 89% of those key metrics in

Tennessee in July.<sup>1</sup> The Commission's prior findings of checklist compliance are thus directly applicable to BellSouth's compliance in Florida and Tennessee.

In fact, BellSouth's evidence of checklist compliance here is even stronger than in the prior successful applications. BellSouth's OSS and, in particular, its change control process ("CCP") continue to improve in ways responsive to the concerns of Competitive Local Exchange Carriers ("CLECs"). Among other things, BellSouth has now implemented its 50/50 plan for allocation of release capacity, and both the Florida Public Service Commission ("Florida PSC" or "FPSC") and KPMG have endorsed that plan as reasonable. Since it filed its last application, moreover, BellSouth has also implemented six new change-control-related performance measures, with penalties on key metrics. BellSouth has also continued to improve its testing environment by, among other things, beginning CLEC testing on a new testing website and publishing a pre-release testing status report to provide CLECs with information on CLEC-affecting defects. Moreover, BellSouth continues to minimize the number of defects in its releases; indeed, BellSouth's recent implementation of Release 10.6 again exceeded industry benchmarks for "best in class" in terms of programming quality. In addition, BellSouth's substantial efforts aimed at improving flow through continue to be successful, even in the face of considerable growth in mechanized Local Service Request ("LSR") volumes.

Additionally, and importantly, this Application is supported not only by the Georgia third-party test that the Commission has already found provides meaningful evidence of BellSouth's OSS performance, *GALA Order* ¶ 108, but also by the extraordinarily rigorous and thorough Florida third-party test. CLECs have repeatedly stressed that the Florida test was an especially exacting one and thus that it provides significant evidence of BellSouth's capabilities.

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<sup>1</sup> *Varner Aff.* ¶ 13 & Exh. PM-31 (describing the key metrics) (App. A, Tab K).

WorldCom proclaimed this Florida test “the best in the country.”<sup>2</sup> AT&T similarly declared that the Florida test was “substantially *more* comprehensive and rigorous” than the Georgia test upon which this Commission has previously relied.<sup>3</sup> BellSouth has now completed this demanding test, and it satisfied 97% of the evaluation criteria. The FPSC and its Staff, moreover, have expressly concluded that the few remaining items do not create substantial barriers to competition. In combination with all the evidence that BellSouth has presented before, and presents again here, BellSouth’s completion of this second third-party test strongly fortifies the conclusion that BellSouth is providing nondiscriminatory access to its OSS.

The diligence that the FPSC and its Staff demonstrated in overseeing this third-party test is emblematic of the extraordinary care and effort that both it and the Tennessee Regulatory Authority (“TRA”) have put into the section 271 process. For instance, in determining that BellSouth’s OSS were checklist compliant, the FPSC relied not only on its comprehensive independent test, but also on a workshop convened to hear CLECs’ “real-world” OSS issues. The FPSC also convened another set of proceedings, including live hearings, to evaluate BellSouth’s compliance with all other checklist requirements. The TRA similarly undertook extensive proceedings with full CLEC participation to resolve issues relating to performance metrics, regionality, and checklist compliance. Ultimately, BellSouth and a coalition of CLECs were able to agree on many important issues, including an appropriate performance plan. Then, based on the extensive evidentiary record before it, the TRA concluded that BellSouth had met all checklist requirements.

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<sup>2</sup> Staff OSS Recommendation at 14, *Consideration of BellSouth Telecommunications, Inc.’s Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996*, Docket Nos. 960786B-TL & 981834-TP (FPSC Aug. 23, 2002) (quoting WorldCom statement) (“*FPSC Staff OSS Rec.*”) (App. C – FL, Tab 60).

<sup>3</sup> AT&T Comments at 18, *GA/LA I 271 Proceeding*, CC Docket No. 01-277 (FCC filed Oct. 18, 2001) (“*AT&T GA/LA I Comments*”).

In sum, by any measure, these state commissions have undertaken extensive proceedings that were open to CLEC participation, and their endorsements of BellSouth's Application should be given great weight here. Indeed, CLECs themselves have singled out the hard work of these two state commissions for praise: "During the last two years, the TRA has developed a reputation as one of the most respected regulatory commissions in the Southeast . . . I would say Tennessee and Florida are probably considered by lawyers to be two places where decisions are based on evidence and merit . . ."<sup>4</sup>

The Commission's evaluation of this Application should also be informed by the real-world success that CLECs are having in BellSouth's Florida and Tennessee markets. CLECs in Florida have gained at least 17.7% of the lines in BellSouth's territory, including at least 11% of the residential lines. Using BellSouth's conservative UNE-P plus E911 methodology, CLEC residential market share in Florida is higher than in any prior approved application. *See Stockdale Aff.* ¶¶ 15-20 (App. A, Tab J). CLECs have also gained double-digit market share in Tennessee, with 11.6% of the access lines in BellSouth's territory. And, while residential market share is not as high on an absolute basis as in Florida, it has grown by 70% since early this year. *See id.* ¶¶ 29-32. As demonstrated in Attachment 1 to this Brief, overall competitive conditions in these states compare extremely favorably to those in other states at the time of successful section 271 applications. Indeed, only in Georgia did CLECs have a higher market share than they currently have in Florida. These real-world facts confirm that BellSouth's markets are open, and that CLECs that want to compete are in fact doing so.

For all these reasons, and others discussed below and in the attached affidavits, this Application should be approved.

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<sup>4</sup> Roy Moore, *Waiting for Signals*, Nashville Bus. J. at 21 (Aug. 2, 2002) (quoting Henry Walker, Counsel for WorldCom and other CLECs).

\* \* \*

Part I of this Brief summarizes the extensive proceedings that the state commissions in Florida and Tennessee have undertaken, with full CLEC participation, to ensure BellSouth's adherence to the pro-competitive requirements of the 1996 Act. Part II demonstrates that BellSouth easily satisfies Track A in both Florida and Tennessee. Part III discusses the comprehensive set of performance measurements – the same measurements that this Commission reviewed in both the Georgia/Louisiana proceeding and the Five State proceeding – on which BellSouth relies to show that it satisfies the competitive checklist in both states. Part IV shows in detail that BellSouth does, in fact, satisfy the checklist by providing competing carriers in Florida and Tennessee with interconnection and network access in accordance with statutory and regulatory requirements. Part V demonstrates that approving BellSouth's Application is consistent with the public interest. Finally, Part VI confirms that BellSouth will abide by the safeguards of 47 U.S.C. § 272.<sup>5</sup>

This Brief and its supporting affidavits are available in electronic form at <http://www.bellsouthcorp.com/policy/271>.<sup>6</sup>

## **I. THE STATE PROCEEDINGS**

This Commission has long encouraged states to play a significant role in the section 271 process. States may “facilitate the development of successful section 271 applications” by

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<sup>5</sup> BellSouth intends to offer in-region, interLATA services in both Florida and Tennessee through BellSouth Long Distance, Inc. (“BSLD”), which will operate in accordance with the requirements of section 272. However, all references to BSLD should be understood to encompass any affiliate of BellSouth Telecommunications, Inc. (“BST”) (or its successors or assigns that provide wireline telephone exchange service) that operates in a manner consistent with this Application's representations regarding the future activities of BSLD. BellSouth will file an international section 214 application so that its affiliate can originate international calls.

<sup>6</sup> The Anti-Drug Abuse Act certifications required under 47 C.F.R. § 1.2002 are provided as Attachment 3 to this Brief.



“conduct[ing] proceedings concerning . . . section 271 compliance with opportunities for participation by interested third parties” and by “adopt[ing] a broad range of clearly defined performance measures and standards,” including a performance assurance plan “designed to create a financial incentive for post-entry compliance.” *KS/OK Order* ¶ 3. As BellSouth describes below, both the FPSC and the TRA have conducted detailed and open proceedings with full CLEC participation, and both have adopted comprehensive performance measurement and enforcement plans. Additionally, the FPSC supervised an extraordinarily thorough third-party OSS test. Thus, under this Commission’s precedents, the conclusions of both these expert bodies that BellSouth has earned section 271 authority should be entitled to “substantial weight” in this proceeding. *Texas Order* ¶ 51.

**A. Florida**

By any standard, the FPSC and its Staff have undertaken an extraordinarily painstaking review of BellSouth’s section 271 compliance. The FPSC’s decision to endorse BellSouth’s Application was the culmination of six years of work, and the FPSC’s decision is fully supported by hundreds of pages of detailed, cogent analysis. Given the extraordinary amount of care and thought that the FPSC has given to these issues, its decision is entitled to the greatest possible weight in this proceeding. *New York Order* ¶ 20.

In 1996, the FPSC opened Docket No. 960786A-TP to evaluate BellSouth’s section 271 compliance. After holding a hearing and undertaking other proceedings, in November 1997 the FPSC issued an order in that docket finding that BellSouth had satisfied some but not all checklist requirements.<sup>7</sup>

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<sup>7</sup> See generally Order No. PSC-97-1459-FOF-TL at 212-16, *Consideration of BellSouth Telecommunications, Inc.’s Entry into InterLATA Services Pursuant to Section 271 of the*

In 1999, acting in response to the “Petition of Competitive Carriers for Commission Action to Support Local Competition in BellSouth’s Service Territory,” the FPSC ordered, among other things, that BellSouth participate in workshops held by the FPSC and its Staff in an attempt to resolve OSS issues that CLECs had raised.<sup>8</sup> Those workshops would also address the CLEC request that the FPSC establish an independent third-party OSS test. *See FPSC Order 99-1078*, at 8.

In August 1999, after holding those workshops, the FPSC approved a Staff recommendation to proceed with a third-party test.<sup>9</sup> The FPSC and its Staff oversaw both the design and the execution of that test, which was intended “to provide conclusive evidence upon its completion of the adequacy of BellSouth’s OSS, as required by the [1996] Act.” *FPSC Staff OSS Rec.* at 15. In January 2000, the FPSC approved the Master Test Plan, selected KPMG Consulting as the test manager, and ordered the test to begin.<sup>10</sup> The FPSC then engaged in constant and detailed oversight of the test, “directing and monitoring KPMG Consulting’s test activities.” *Id.* at 12. The FPSC also invited full CLEC participation in this third-party test:

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*Federal Telecommunications Act of 1996*, Docket No. 960786-TL (FPSC Nov. 19, 1997) (App. C – FL, Tab 1).

<sup>8</sup> *See* Order No. PSC-99-1078-PCO-TP at 8, *Petition of Competitive Carriers for Commission Action to Support Local Competition in BellSouth Telecommunications, Inc.’s Service Territory*, Docket No. 981834-TP (FPSC May 26, 1999) (“*FPSC Order 99-1078*”) (App. G – FL, Tab 3).

<sup>9</sup> *See generally* Order No. PSC-99-1568-PAA-TP at 10-12, *Petition of Competitive Carriers for Commission Action to Support Local Competition in BellSouth Telecommunications, Inc.’s Service Territory*, Docket No. 981834-TP (FPSC Aug. 9, 1999) (App. G – FL, Tab 6).

<sup>10</sup> *See* Order No. PSC-00-0104-PAA-TP, *Consideration of BellSouth Telecommunications, Inc.’s Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996*, Docket Nos. 960786-TL & 981834-TP (FPSC Jan. 11, 2000) (App. G – FL, Tab 16).

“[CLEC<sup>11</sup>] participation was sought throughout, beginning with the drafting of the [Master Test Plan] itself, continuing through more than 130 weekly status meetings, and including both direct participation in test activities and input via interviews. [CLECs] were also able to monitor test status and results via the Commission’s Web site, which listed all test observations and exceptions and provided monthly status reports.” *Id.* at 13.

As CLECs themselves have repeatedly stressed, the Florida test was extraordinary both in its rigor and in the amount of time and effort that the FPSC devoted to supervising it. AT&T, for instance, has stated that “the test plan approved . . . by the PSC is the most comprehensive plan in the region – if not in the nation.”<sup>12</sup> WorldCom has described the test as “thorough” and “credible.”<sup>13</sup> Covad has likewise declared that the Florida test was “comprehensive” and “independent.”<sup>14</sup>

Nor did the FPSC limit its investigation of BellSouth’s OSS to this exhaustive third-party testing. Rather, the FPSC saw this test as only one leg of the “three-legged stool upon which the Commission’s assessment of BellSouth’s OSS will sit.” *Id.* at 10. The other “legs” were (1) detailed evaluation of BellSouth’s commercial performance data, and (2) assessment of CLEC “real-world” experience through a February 2002 OSS workshop and the filing of comments after that workshop. *See id.* Altogether, the FPSC considered more than 50 separate CLEC OSS issues raised through the workshop process. *See id.* at 11.

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<sup>11</sup> The FPSC uses the term “ALEC” in its orders. For simplicity, throughout this Brief, BellSouth will refer to these carriers as CLECs.

<sup>12</sup> AT&T News Release, *AT&T Applauds Florida PSC for Taking Steps to Bring Local Phone Competition* (Dec. 21, 1999).

<sup>13</sup> WorldCom Comments at ii-iii, *GA/LA II 271 Proceeding*, CC Docket No. 02-35 (FCC filed Mar. 4, 2002).

<sup>14</sup> Covad Comments at 5, *Five State Proceeding*, CC Docket No. 02-150 (FCC filed July 11, 2002) (“*Covad Five State Comments*”).

The FPSC Staff considered the enormous amount of information as to BellSouth's OSS generated through these three complementary modes of assessment and, on August 23, 2002, issued a recommendation concluding that "BellSouth provides [CLECs] nondiscriminatory access to its OSS." *Id.* at 96. The FPSC Staff supported that assessment through more than 90 pages of careful analysis and the 1,000-page final third-party test report filed by the independent tester (KPMG). *See FPSC Staff OSS Rec.*

Also on August 23, 2002, the FPSC Staff issued another detailed recommendation concluding that BellSouth had satisfied all other aspects of the section 271 checklist. *See FPSC Staff Checklist Rec.*<sup>15</sup> That recommendation too was based on an extensive record created through multiple days of live hearings, as well as extensive written filings made by all interested parties. *See id.* at 14-16. The Staff's 255-page recommendation as to these other checklist issues again discussed in detail the arguments that CLECs had raised and explained why they did not show that BellSouth failed to comply with section 271.

On September 9, 2002, all five Commissioners of the FPSC unanimously determined that BellSouth had met each and every checklist requirement (as well as Track A) and adopted both Staff recommendations.<sup>16</sup>

Nor are these extensive proceedings the sum total of the FPSC's actions to ensure the success of local telecommunications competition in Florida. Among other things, the FPSC has taken action to establish comprehensive performance metrics and a self-effectuating enforcement

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<sup>15</sup> Staff Checklist Recommendations, *Consideration of BellSouth Telecommunications, Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996*, Docket No. 960786A-TP (FPSC Aug. 23, 2002) ("FPSC Staff Checklist Rec.") (App. C – FL, Tab 59).

<sup>16</sup> *See generally* FPSC Vote Sheet, *Consideration of BellSouth Telecommunications, Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996*, Docket No. 960786A-TL (FPSC Sept. 9, 2002) (App. C – FL, Tab 61).

plan, to ensure TELRIC-compliant pricing, and to establish pro-competitive collocation rules. The FPSC's actions on those issues are summarized in Exhibit JAR/CKC-8 to the affidavit of John Ruscilli and Cynthia Cox (App. A, Tab G).

**B. Tennessee**

Like the FPSC, the Tennessee Regulatory Authority has been investigating BellSouth's section 271 compliance for more than half a decade. In 1997, the TRA established a formal inquiry into BellSouth's compliance with section 271. Thereafter, the TRA and its Hearing Officer held technical workshops, supervised discovery, and heard live testimony for eight days.<sup>17</sup> In 1999, BellSouth withdrew its then-pending Notice of Section 271 Filing with the TRA, and pledged to renew that filing at an appropriate time. *See TRA Dismissal Order* at 3-4.

In 2001, the TRA opened a docket (No. 01-00362) to determine whether BellSouth's OSS complied with section 271. This docket was intended to investigate, among other things, whether BellSouth's OSS were regional. After discovery was taken and hearings were held on that issue, the TRA (after first making a contrary decision) ultimately determined – in accord with the decision of every other state commission in BellSouth's region to address the issue – that BellSouth's OSS were regional.<sup>18</sup>

Also in 2001, BellSouth filed a new section 271 case with the TRA. BellSouth subsequently refiled that case, including a full brief and supporting evidence, on April 26,

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<sup>17</sup> See Order Accepting BellSouth Telecommunications, Inc.'s Notice of Voluntary Dismissal Without Prejudice and Withdrawal of Advance Notice of Section 271 Filing at 2-3, *BellSouth Telecommunications, Inc.'s Entry into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket No. 97-00309 (TRA Nov. 22, 1999) ("*TRA Dismissal Order*") (App. C – TN, Tab 1).

<sup>18</sup> See Order Granting Reconsideration of and Modifying the Order Resolving Phase I Issues of Regionality at 6, *Docket to Determine the Compliance of BellSouth Telecommunications, Inc.'s Operations Support Systems with State and Federal Regulations*, Docket No. 01-00362 (TRA Aug. 8, 2002) ("*TRA Reconsideration Order*") (App. E – TN, Tab 56).

2002.<sup>19</sup> CLECs were then given opportunities for discovery, and filed responsive testimony on July 12, 2002. *See TRA Settlement Order* at 1-2. BellSouth filed its reply evidence on July 22, 2002.<sup>20</sup>

Although the TRA had scheduled a full week of live hearings on these issues for early August, at the suggestion of the TRA Pre-Hearing Officer, BellSouth and a coalition of CLECs (including WorldCom, Birch Telecom, Covad, and Ernest Communications) initiated settlement discussions. *See id.* at 2. Those negotiations were successful, and they resulted in an agreement that the case be submitted to the TRA on the current written record and thus without the need for a hearing. *See id.* at 2-3. The parties further agreed to close the separate docket investigating whether BellSouth's OSS were compliant with section 271, although the CLECs reserved their right to file complaints with the TRA on that issue and to request that the TRA grant expedited treatment to such complaints. *See id.* at 3. The parties further agreed to resolve the performance measurement issues pending in another TRA docket (No. 01-00193) by agreeing to adopt, no later than December 1, 2002, the service quality measurements ("SQM") and self-effectuating enforcement mechanisms ("SEEM") established by the FPSC. *See id.* at 4. Until that time, the parties agreed that BellSouth could rely upon the Georgia performance plan. *See id.* On August 7, 2002, the TRA unanimously approved this agreement at a public hearing. *See id.* at 6.

At a separate agenda session held on August 26, 2002,<sup>21</sup> the TRA found, by separate vote on each item, that BellSouth had satisfied all aspects of the competitive checklist, as well as

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<sup>19</sup> *See App. C – TN, Tab 5; see also Order Approving Settlement Agreement at 1, BellSouth Telecommunications, Inc.'s Entry into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996, Docket No. 97-00309 (TRA Aug. 29, 2002) ("TRA Settlement Order") (App. H – TN, Tab 54).*

<sup>20</sup> *See App. C – TN, Tab 8.*

Track A and section 272. *See TRA Trans.* at 6, 10-41, 44-46. The TRA further concluded that approval of BellSouth's section 271 Application would be in the public interest. *See id.* at 43-44. The TRA approved BellSouth's SGAT at the same proceeding. *See id.* at 9-10.

## **II. BELLSOUTH SATISFIES THE REQUIREMENTS OF TRACK A IN BOTH FLORIDA AND TENNESSEE**

BellSouth easily satisfies the Track A requirements of section 271 for both Florida and Tennessee. In order to satisfy Track A, BellSouth must show that it

has entered into one or more binding agreements that have been approved under section 252 of this title specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service . . . to residential and business subscribers. For the purpose of this subparagraph, such telephone exchange service may be offered by such competing providers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier.

47 U.S.C. § 271(c)(1)(A). BellSouth has readily made this showing for both Florida and Tennessee. *See FPSC Staff Checklist Rec.* at 31, 40-42; *TRA Trans.* at 6.

Florida. There are at least 51 facilities-based providers in Florida. *See Stockdale Aff.* ¶ 17 & Table 2. Among the many facilities-based providers in Florida with whom BellSouth has an interconnection agreement are AT&T, Elantic (Florida Digital Network), KMC Telecom, Knology, MCI, and US LEC, each of which independently satisfies the requirements of Track A. *See id.* ¶ 19.

In addition, facilities-based CLECs operating in Florida serve at least 467,000 residential access lines and at least 724,000 business access lines in the state. *See id.* ¶¶ 15-17 & Tables 1-

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<sup>21</sup> *See Transcript of Proceedings, BellSouth Telecommunications, Inc.'s Entry into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket No. 97-00309 (TRA Aug. 26, 2002) ("*TRA Trans.*") (App. C – TN, Tab 19).

2. The vast majority of these lines are served over CLECs' own facilities. *See id.*<sup>22</sup> Overall, BellSouth's conservative estimate is that CLECs provide local service to at least 1,279,000 access lines, which represent at least 28.9% of the business market, 11.1% of the residential market, and 17.7% of the total access lines in BellSouth's territory in Florida. *See id.*

Tennessee. BellSouth's satisfaction of Track A in Tennessee is equally clear. There are at least 35 facilities-based providers in Tennessee. *See id.* ¶ 29 & Table 5. Among the many facilities-based providers in Tennessee with whom BellSouth has an interconnection agreement are AT&T, Birch Telecom, Knology, MCI, NewSouth Communications, and US LEC, each of which independently satisfies the requirements of Track A. *See id.* ¶ 31.

As in Florida, moreover, CLECs competing in Tennessee are providing local telephone exchange service to residential and business subscribers exclusively or predominantly over their own facilities. *See id.* ¶¶ 27-29 & Tables 4-5. Facilities-based CLECs operating in Tennessee serve at least 17,000 residential access lines and at least 291,000 business access lines in the state. *See id.* Overall, BellSouth estimates that CLECs provide local service to at least 334,000 (and probably closer to 378,000) access lines. *See id.* These numbers represent at least 30.1% of the business market, 2.2% of the residential market, and 11.6% of the total access lines in BellSouth's territory in Tennessee. *See id.*

In sum, BellSouth clearly meets the requirements of Track A in Florida and Tennessee. *See* 47 U.S.C. § 271(c)(1)(A).

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<sup>22</sup> *See Michigan Order* ¶¶ 86-104 (for purposes of Track A, service provided over UNEs is facilities-based).



### **III. BELLSOUTH HAS ADOPTED COMPREHENSIVE AND RELIABLE STATE-APPROVED PERFORMANCE MEASUREMENTS**

In the *GA/LA Order*, this Commission properly concluded both that BellSouth's SQM performance plan provided data that covered a "broad range of performance measures and standards" and that, "as a general matter, BellSouth's performance metric data is accurate, reliable, and useful." *GA/LA Order* ¶¶ 2, 19. The Commission again found BellSouth's data reliable in the recent *Five State Order*: "[W]e find that, as a general matter, BellSouth's performance metric data are accurate, reliable, and useful. This is based on extensive third party auditing, the internal and external data controls, BellSouth's making available the raw performance data to competing carriers and regulators, BellSouth's readiness to engage in data reconciliations, and the oversight and review of the data, and of proposed changes to the metrics, provided by state commissions." *Five State Order* ¶ 16 (footnotes omitted); *see id.* ¶ 294 ("[W]e have found BellSouth's performance data to be reliable.").

Those findings apply equally here, because, as explained in the affidavit of Alphonso Varner, the TRA has adopted the same SQM plan that BellSouth used in Georgia/Louisiana for purposes of assessing current section 271 compliance, and the FPSC has adopted a nearly identical plan for current purposes. *See Varner Aff.* ¶¶ 108, 123 (describing the interim Florida plan and identifying the few areas of difference from the Georgia plan); *TRA Settlement Order* at 4 (approving use of Georgia SQM on an interim basis). The systems used to produce data in Florida and Tennessee, moreover, are the same as in BellSouth's other seven states. *See Varner Aff.* ¶ 32. Accordingly, the audits and other checks on data reliability that the Commission has previously relied upon are also applicable here. There is thus no reason for the Commission to depart from its prior holding that "BellSouth's data is sufficiently reliable for purposes of

conducting [its] section 271 analysis.” *GA/LA Order* ¶ 20; *see Five State Order* ¶ 19 (“[W]e find that BellSouth’s data is sufficiently reliable for purposes of our section 271 analysis.”).

As the Commission is aware from prior proceedings, BellSouth’s performance reporting is comprehensive. BellSouth reports measures in 12 separate categories: pre-ordering; ordering; provisioning; maintenance and repair; billing; operator services and directory assistance; database updates; E911; trunk group performance; collocation; change management; and bona fide/new business request process. *See Varner Aff.* ¶ 22. Across those 12 categories, BellSouth reports data for approximately 2,300 submetrics. *See id.* ¶ 23. A detailed discussion of BellSouth’s performance measures is attached to the affidavit of Alphonso Varner. *See id.* Exh. PM-1.

Where possible, BellSouth compares its SQM performance against the service that BellSouth provides to its own retail operations. *See Varner Aff.* ¶ 25. Where no such comparison is available, BellSouth tracks its wholesale performance against benchmarks “sufficient to provide an efficient competitor a meaningful opportunity to compete.” *Second Louisiana Order* ¶ 134 (internal quotation marks omitted); *see Varner Aff.* ¶ 25.

BellSouth publishes comprehensive monthly performance reports on its website. *See Varner Aff.* ¶ 68. Performance data for CLECs and BellSouth retail units are available to all CLECs on an aggregate basis, and individual CLECs can access data specifically relevant to them on a password-protected basis. *See id.*

For all these reasons, the Commission should have the same confidence in the meaningfulness of BellSouth’s data that it has had in prior applications. The same internal controls on the data, including data-integrity checks and manual validation processes, exist here as well. *See id.* ¶¶ 57-67. Moreover, BellSouth’s performance reporting has been subject to

repeated audits in both Georgia and Florida, and there are no exceptions from either the Florida or the Georgia audits that raise significant questions about the overall reliability of the data. *See id.* ¶¶ 60, 62-63, 79-122 (discussing the three KPMG Georgia audits and the Florida audit in detail). Moreover, it remains the case both that BellSouth's data will be subject to annual audits over the next several years and that state commissions throughout BellSouth's region will continue to monitor BellSouth's metrics. *See id.* ¶ 66; *Massachusetts Order* ¶ 247.<sup>23</sup>

#### **IV. BELLSOUTH SATISFIES ALL REQUIREMENTS OF THE COMPETITIVE CHECKLIST IN FLORIDA AND TENNESSEE**

As both the FPSC and the TRA found, BellSouth satisfies each and every requirement of the competitive checklist in Florida and Tennessee. BellSouth has binding legal obligations as to each of the checklist items. Those obligations are in the SGATs that BellSouth has filed in Florida and Tennessee and in the hundreds of agreements that it has signed with individual CLECs. Those SGATs, as well as a matrix that identifies agreements that satisfy each checklist requirement or subrequirement, are attached to the joint affidavit of John Ruscilli and Cynthia Cox (Exhs. JAR/CKC-1, JAR/CKC-2, JAR/CKC-5, JAR/CKC-6).

##### **A. Checklist Item 1: Interconnection**

Checklist Item 1 requires BellSouth to provide "[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)." *See* 47 U.S.C. § 271(c)(2)(B)(i). Section 251(c)(2) imposes upon incumbent local exchange carriers ("ILECs") "[t]he duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . for the transmission and routing of telephone exchange service and exchange access." *Id.* § 251(c)(2)(A). Such interconnection must satisfy three

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<sup>23</sup> Performance data for May through July 2002 are attached to the affidavit of Alphonso Varner. *See Varner Aff.* Exhs. PM-2 Attachs. 1-3, PM-3 Attachs. 1-3.